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AUTHOR Meyer, John W.
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ABSTRACT

Legalization here refers to the introduction into the educational system of new legal rules, emanating from outside the routine channels of educational management. It includes general legal rules from legislation, from the courts, or from higher administrative levels. The key to the definition is lack of integration of the new rules with the main rules already constituting the system or the lack of integration of the new channels of control with the old ones. The main argument of this paper is that legalization is a product of the rise of more central (now, national) controls and pressures in a system that is organizationally decentralized. Interventions, in such a system, take the form of specialized rules unintegrated with the rest of the educational system. Such legalization creates a good deal of organizational disorder in the educational system itself, though this is not inevitably to be seen as unsatisfactory. Policy implications and possible future directions for change are discussed. (Author/JM)

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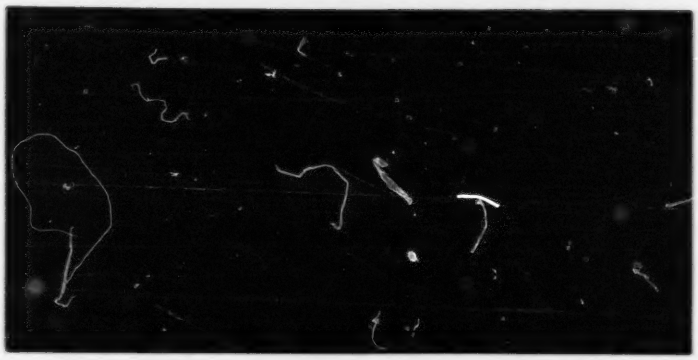

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ORGANIZATIONAL FACTORS AFFECTING LEGALIZATION IN EDUCATION

John W. Meyer*

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*Dr. Meyer is Professor of Sociology and Professor, by Courtesy, School of Education Stanford University.

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Abstract

Legalization is here defined as the direct penetration of legal rules, outside the routine channels of educational management, into the educational system. It includes general legal rules from legislation, from the courts, and from higher administrative levels.

It is argued here that legalization, in American education, results from the perception of national educational problems and a national educational agenda in an educational structure with little legitimate central authority and coordination. Interventions, in such a system, take the form of specialized rules unintegrated with the rest of the educational system. Such legalization creates a good deal of organizational disorder in the educational system itself, though this is not inevitably to be seen as unsatisfactory. Policy implications, and possible future directions for change, are discussed.

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In this paper, I discuss the aspects of educational systems and their environments that affect the rise and decline of "legalization" in their interaction. Legalization is itself a problematic term, because almost every aspect of educational structure and change is importantly legal. (I) I give a rough definition, according to which legalization is the disorderly introduction into education of state authority. In this idiosyncratic definition, legalization means disorderly legal authority, and is to be contrasted with the routine legal authority that regularly constitutes and changes education. The definition employed here has limited general utility--though few others have established much credibility either--but greatly simplifies the present argument.

(II) Legalization, then turns out to depend, not only on external social conditions creating confrontations between political power and educational structure, but on the structure of educational organization itself. The paper attends mainly to organizational factors: the argument is that central demands (or centrally legitimated demands) placed on a decentralized educational system generate the disorderly use of legal channels that is our focus. (III) But of course the wider social changes that build up demands on educational systems have much effect. We discuss the processes generating such claims, which we call educational disorders perceived in the wider society. And we discuss some processes that organize these disorders in ways that especially promote legalized resolutions. (IV) The effects of wider social changes on likelihood of legalization are themselves conditioned by the structure of the educational system. (V) We briefly consider some of the effects of legalization on educational systems--emphasizing especially the cumbersomeness and

disorganization of administrative systems that result. (VI) And we briefly consider future prospects for delegalization.

The main argument of the paper is that legalization is a product of the rise of more central (now, national) controls and pressures in a system that is organizationally decentralized. Organizational decentralization, combined with nationwide demands, social conceptions, and rules, are general features of the American polity, and legalization is a common consequence. They are specially prominent features of American education, and so is legalization. In this context, waves of expansion in national understandings governing education are likely to generate waves of legalization: this is likely to occur both through the actions of national elites and through the actions of legitimized subgroups.

It is important to note at the outset that no normative position is taken here. External disorders and claims pose problems for educational systems: that does not mean they are illegitimate and should be suppressed. Sometimes legalization in our sense results--rules and legal rights enforced in a disorganized way on the educational systems. This often creates considerable disorganization in educational organizations, and certainly a more centralized system would be simpler and tidier. But creating clean hierarchical educational systems--or public organizations in general--has not been an important desideratum in American political history, and for good reasons. We often prefer disorganized structures open to multiple inputs, and are willing to pay the price: education is a striking example. The assumption has been that efficient public organization may well be unresponsive, and it may

well be right. In any event, it should be clear that in this paper there is no intention to stigmatize social claims that arise against education or the disorderly legalization that results: administrative simplicity and order in education is and should be a very minor desideratum.

I. "Legalization"

Educational systems are deeply institutionalized in society. There are generally shared definitions within them of their main outlines: for instance, the pageantry of progress from kindergarten through the post-doctorate is clearly understood, and so are the broad outlines of the curriculum. These shared definitions unite education as much as any special organizational mechanisms or rules: parents, the wider community, teachers, administrators, legislatures, and interest groups of all kinds, know the main outlines. In one sense, education is more a ritual system than a technical organizational one: more of what a third-grade teacher is to do is communicated by the common culture than by any combination of administrators (or socializers in teacher education programs). Occasionally some confrontation arises, sometimes from the legal system--an anomalous right of a pupil, or programmatic rule, or special requirement--some external social presupposition that all is not well, and that special virtues must be enforced. A drama of opposition is created between education and society. This is colloquially what we mean when we talk about "legalization"--a court case or order intruding into the system, a special administrative requirement imposed on it by the state, or special legislative action. These anomalies are what we really mean by "legalization." But a formal definition is not so easy, because

even though actors in the system are not routinely conscious of it, the whole institutionalized structure itself is embedded in legal rules. The third-grade teacher teaching arithmetic is not conscious of these rules, because arithmetic is part of a deeply-institutionalized national routine--but the rules are there in the law and regulations. We need a definition of legalization that separates the anomalies from the routine: otherwise, legalization refers to the whole system.

Thus, throughout the world, modern educational systems are legally based. Laws and state regulations define, compel, and classify pupils; specify days, hours, and years of attendance; and define much of the impact of education in later life by occupational credentialling rules. They credential teachers, and specify their relevant properties. They lay out the required curricula, and sometimes even define the proper materials. They define and periodize the conjunction of pupils, teachers, and curricula: they also specify in detail the physical space in which this conjunction is to occur; the size of classrooms, the size and height of their windows, the number and character of toilets and water fountains, and detailed features of school design and construction. And the entire assembly of elements--pupils, teachers, curricula, and space--is approved by the state. The school is or is not accredited, and thereby its resources are mainly determined, as well as the social positions of its students and graduates.

Beyond the school itself, laws and state regulations establish a larger organizational structure: defining, requiring, and legitimating the elements of this system. There are principals, districts, super-

intendents (in some systems, inspectors), and a variety of state functionaries in ministries or offices or departments of education.

All these materials make up an educational organization and an educational order. And all of it, essentially, is legal in foundation. It makes little sense to speak of legalization as a variable by this criterion--though one can find a little variation around the world in legalization in this sense.

One could argue that all of these standard legal ingredients of the system are so deeply institutionalized in the educational order itself that their legal bases are taken for granted by the actors involved. Legalization, then, might be restricted to legally induced changes in the system: since much educational change has some base in legal authority, this directs our attention to educational change in general. It is not useful to treat as legalization every enactment of a properly constituted hillbilly school board, every routine complaint by an authorized citizen-parent, every curricular change installed by a legally mandated subminister of education, or every funding modification in the routine order enacted by a legislative body. Most legal changes are not "legalization"--they are the routine modification, through the established chain of command, of the established order. These legal changes are part of the organizational order itself--they are part of its standard linkages with the environment. They are, in short, too orderly.

We mean by legalization the disorderly introduction of legal authority into the educational order: instances of the exercise of authority which violate the routinized order and chain of command, which introduce new rules without their integration into the established set. We mean decisions of the courts or of administration agencies, or of legislative bodies creating a specific program or compelling a specific line of action outside the routinized command structure. But we also mean any court or legislative actions legitimizing a new interest with specific rights within the system.

Thus, suppose a concern about the inadequate educational treatment of the handicapped arises in society, and demands are made through the legal system. If these are responded to by the national legislature in its routine management of the educational system, it is not by our definition legalization. If the national ministry of education adapts the national educational systems rules in a routine and integrated way, it is also not legalization. But if the national legislature creates new rights for classes of handicapped citizens which they can impose on education through the courts, or funds a new special program in no way linked to other aspects of the educational system, or imposes direct controls on schools bypassing intervening administrative layers, our criteria for legalization are met. They are also met if such programs are created administratively by national officials. And it is legalization by our account if the courts on their own discover and adapt to the new claims for the handicapped, and impose new demands on the educational system. The key to our definition is lack of integration

of the new rules with the main rules constituting the system, or the lack of integration of the new channels of control with the old ones. Thus we contrast legalization by our definition--disorderly legalization--with the routine legal controls managing and changing every educational system in the world. Our definition may seem arbitrary, but no other is of much use in discussing so quintessentially public an institution as education in the modern world: other definitions make legalization coterminous with centralization, or with rates of administrative action, or with rates of change.

Legalization, thus, is likely to be a transitory phenomenon, like a social movement: the routinization and integration of its claims in the established structure are likely to eliminate it as a main process on any specific issue. We focus, then, on the rise and fall of waves of court actions and special-purpose legislation outside the regular chain of educational command: on the legal introduction of disorder into the educational order.

The Problem: We consider the conditions under which demands against the educational system arise in society--confrontations between social rights and interests, on the one hand, and the putatively recalcitrant educators on the other: and the conditions under which these demands become legal rules penetrating the system from outside rather than through its routine administrative structure. We call the demands arising outside the system disorders--depictions of needs and rights in society unmet by the educational system--and the special results of interest here legalization.

The special nature of the educational order in modern societies affects both the process of development of external disorders and the extent to which they are resolved by legalization--that is, by the transfer of the external disorder into one internal to the educational system. We turn to an examination of the educational order.

Nature of the Educational Order: One can imagine an institutional order so closed and complete that almost no sources of disorder are left--almost no sources or grounds of legalization. In practice, this is quite unrealistic, and the educational order shares with all others some potential sources of disorder:

(1) Orders are connected to society through some principles of collective authority and purpose. Interests may arise or change in society altering or reweighting the goals of the educational system (e.g., a concern with radically improving the services provided the poor or the handicapped). If authority within the order is weak enough or if the rearrangement of interests is substantial enough, a disorderly penetration of the system may result.

(2) The internal structure of any order is also subject to a variety of social constraints (e.g., the required forms of treatment of workers). Interest readjustments in society may lead to the alteration or delegitimation of elements of the educational processing system itself (e.g., certain groups are not properly funded or employed in the system).

But beyond these ordinary possibilities for the creation of disorders, the educational system contains extra potential, arising from the special nature of educational order. Education is a rationalized and clearly defined organizational system, like many others. But this organizational system is imposed on an extraordinarily chaotic domain: the human inputs are highly and unpredictably variable, technologies of instruction are nonexistent or variable in nature and consequence, outputs are unpredictable and uncertain in measurement, and an organizational system of controls over all this would be impossible or impossibly expensive. The real world of the educational domain is, as the current phrase in organizational theory has it, "loosely coupled" in the extreme (Weick, 1976; March and Olsen, 1976). In this situation, the rationalized educational order has a highly ritualized character, disconnected at every point of technical substance from the variability of the domain over which it exercises control (Meyer and Rowan, 1977, 1978). In fact, the creation of a coherent and rational educational order requires such disconnection. Thus order in the classification of pupils is achieved by ignoring their substantive properties and attending to ritual ones: they are admitted to Algebra II because they "have had" Algebra I, not because they know it; they enter college because they "have graduated" from high school, not by virtue of substantive properties or competencies. They enter school by virtue of age, not competence. Order in the definition of teachers is achieved by reference to "professionalism" and credentials, not substantive capacities or skills. Order in the definition of the curriculum is achieved by abstract specification and by avoidance of inspection that is renowned and quite extreme (e.g., Dornbusch and

Scott, 1975). And arching over this technical domain is an organizational system that attends carefully to ritual matters (attendance, credentials, formal progam categories and labels) and sheds information on matters of substance (Meyer and Rowan, 1978; Berman and McLaughlin, 1975-8; David, 1978; and many others). Administrators disinform themselves on matters of classroom processes and outcomes (Meyer, et al., 1978)--if outcome data are forced on them by exogenous processes, they ignore them (David, 1978; Davis and Stackhouse, 1977). In sharp contrast to organizational orders resting in technical action and consequence and in which information is a resource, education is a highly institutionalized order with ritual characteristics--information on the technical world is a cost (Meyer, Scott, and Deal, 1979). Imagine a religious organization trying to deal with the actual evaluations by God of the souls of its members and elites.

All this is fairly well understood in the field, though in a rationalist world it is delegitimated and treated as wrong or archaic or almost scatological. We are in chronic postures of rationalizing educational reform: professors of education ordinarily pursue these reforms for primary and secondary education, while sustaining the ritual structures in their own universities. There are, thus, substantial literatures blaming each of the parties to the educational order (parents are unconcerned and inattentive; teachers are ignorant and reactionary and self protective; administrators are lazy and self serving; and politicians bow down too much to irrational pressures). From a more serious point of view, this is unrealistic: many parties have a stake in educational

order, and it is quite clear that any educational order must most of the time keep its head in the sand, given a substantive domain so filled with variability and unpredictability. The extension of modern rationality so far into social life requires a great deal of sustained ignorance.

But this means that the educational order is surrounded by much potential (legalizable) disorder:

(3) Pupils and their properties are in fact infinitely variable. Any new virtue or handicap may be "discovered" and licensed and made basis for legitimate claims on the order. Recently, a number of new educational handicaps have been discovered with the support of some researchers, and made grounds for claims (Hobbs, 1975).

(4) The substantive effects of education are enormously uncontrolled and variable. Order is obtained by the social definition that all products of Algebra I are in important ways alike, as with all high school graduates. They are not. Any "discovery" of this creates a disorder, and with some interpretation, an injustice and a claim.

(5) The actual processes of classroom life are uncontrolled and variable. This may be discovered, treated as a violation of putative technical rules, and made basis of a claim.

(6) The higher levels of management and funding of the system are based on ritual categories, and relatively uncontrolled in substance. Variabilities and claims may arise. (E.g., in a school with more troublesome students, any individual student with given properties receives fewer resources than would be the case in another school with the same overall per-pupil resources.)

Overall, it should be apparent that educational orders are more likely loci of perceived disorder than other orders.

But in important ways, all educational systems around the world have these common properties. We need to go on to consider conditions under which perceived disorders produce legalization. Much more routine responses are more common: In every educational system, routine administrative structures are constantly adapting education to new groups, new curricular themes, new problems, and so on. The special feature of American education in the recent period is probably not the rate of expansion of social claims or disorders--many educational systems, for instance in developing countries, are under much more extreme pressures--but the extent to which these are turned into legalized responses.

II. Structural Conditions of Legalization in Education

Waves of socially perceived disorders in the system lead to controls. But most of these occur through the routine operation of the structure itself. Our problem is to understand the conditions under which this does not happen (a necessary aspect of legalization, by definition), and the further conditions under which legalization is a possible outcome.

Assume the available disorders. Consider two variables that may affect their outcomes:

(1) Educational orders vary in degree of organizational centralization. Many national systems are highly centralized. A ministry of education defines pupils, teachers, curricula, and so on, and coordinates

these in a rationalized myth of education. Every aspect of the educational system has as its referent the rules of the ministry.

The American system is highly decentralized. The national state has practically no jurisdiction over the content of education. There are no national state curricula. There are no national state definitions of teachers, and very few accrediting principles for schools. There are the weakest national state definitions of pupils and their general educational categories (specifying, for instance the definition of the 4th grade, or of high school graduation). The national state department of education is a collection of disorganized special programs--a situation clearly resulting from the absence of legitimated national state authority over education itself.

States do have substantial controls, though they vary greatly in this, from centralized Hawaii to many states with very weak central rules (Wirt, 1977). By and large, states do build up an integrated myth of education, specifying general categories of pupils and their attendance rules, certifying teachers in various categories, requiring some elements of standard curricula, establishing funding rules and their district bases, defining school and classroom space, accrediting schools, and so on. These integrated control systems are substantially weaker than those built into many national states, but they are nontheless very real, and have been built up over a long history (for instance, state laws making education compulsory were passed between 80 and 110 years ago; state credentialling of teachers has a history almost as long).

School districts have much autonomy of their own, defined in state law. Within state rules, they have many legitimated powers over pupils, teachers, and curricula. And they are, of course, subjected to legitimated political influences from their own constituencies.

Schools themselves often have considerable autonomy over their own programs. And the tradition of local influence over school policy is substantial (aided by a structure in which many administrators have no tenure rights).

Overall, the American system is one in which most educational authority of an organizational kind is reserved for the state or local levels. This has extremely important consequences for legalization rates, as we will subsequently argue.

(2) Issues and disorders also vary in their loci. Some are local, as when a given group of parents is dissatisfied with the educational progress of their children. Others are national in scope, as when American economic failures are attributed to a lax national educational system, or a national problem in the treatment of the handicapped or of minorities is discerned, or the "Sputnik crisis" is attributed to failures of American engineering training, or the "Watergate crisis" is seen to result from the ethnical failures of American legal education.

The locus of a disorder is socially determined. We discuss in Part III how wider social forces have shifted many disorders to the national level, and in Part IV how this has affected legalization.

At present, however, our interest lies in the consequences of the intersection between system centralization and disorder loci for the creation of legalization. Our two variables create four distinct situations.

Centralized Disorders in Centralized Systems: In these systems, national disorders do not tend to generate legalization. The centralized system provides routine channels for the management of new interests and claims, and for the management of the discovery of new forms of variation to which adaptation is required. The legislature may act, the ministry creates new rules of curriculum or program or new types of pupils, and the legitimately subordinated levels of the structure comply with more or less precision. New claims are integrated in the ongoing myth of education: the loose ends that might make possible court cases are tidied up in the standard bureaucratic ways. The same processes that specify the rights, say, of the poor also specify the educational procedures that meet these rights. Such systems, carrying central responsibility for and authority over education, typically do not endow groups in society with the kind of standing to make possible such court actions. Similarly, central legislative bodies carry the responsibility to integrate the whole educational system--to create the rules under which the responsible ministry functions. They infrequently perpetrate legalization--the anomalous introduction of rules violating extant ones or of procedures violating the regular chain of command--for doing so would constitute a form of violation of their own authority.

Localized Disorders in Centralized Systems: Complaints are, of course, endemic to educational systems. But in centralized systems, local complaints are relatively unlikely to take legalization forms (though these complaints make up much of what little legalization there is in such systems). Elaborated bureaucratic systems contain elaborated procedures to manage or suppress complaints within the routinized order. An they occur in states that are likely to keep access to extraeducational machinery for local complaints at a low level: the same state which assumes general educational responsibility preempts under this responsibility the possibilities for autonomous educational action through the state legal system.

Nevertheless, there is undoubtedly considerable variation among states here: it seems likely that states with both elaborated centralized control systems and substantial development of the rights of relatively autonomous citizenship make possible legal action by local subgroups more than states in which citizenship is itself mainly seen as a creature of the state itself. This situation could relatively easily be studied empirically (see Boli-Bennett, 1980).

A further issue here is the degree of implementation of the national system in a nominally centralized order. Many developing countries have high levels of educational centralization (Ramirez and Rubinson, 1979), without much effective implementation. This might make possible a variety of legal actions on the part of local groups. It would be relatively easy to investigate what happens when national legislative and constitutional guarantees for educational access are accompanied by

an educational system that does not contain many schools--a common situation in developing countries. But such countries often have structures restricting the access of local groups to either courts or legislative and administrative authority.

Localized Disorders in Decentralized Systems: Here we anticipate limited legalization. Such systems are designed to manage local disorders in their routine structure: the classic American school board election, or local movement to fire a school principal or superintendent, take this form.

On the other hand, the same American processes that maintained a decentralized educational system also legitimized much individual and group action in the courts. So while other forms of legalization (i.e., legislative and administrative penetration of the system)may have been limited, fairly high levels of litigation may have been common. Even today, substantial proportions of the education cases in the courts are traditional kinds of local litigation (see the cases discussed in Kirp 1980): business conflicts between local companies and the schools; conflicts over school construction and location or over loci of school closings; conflicts between individual children and families and the local schools; and so on. In one sense, the frequency of such suits in American courts suggests we are really discussing a different structure: such claims are local in one sense, but take advantage of nationally conferred rights. Genuinely decentralized disorder--those claims of local groups not built around the elaborated citizenship

rights of the American system--might generate little legalization of any kind. The relatively extensive procedural rights of American citizens has, as is well known, led to court-generated legalization in many areas of American life, and has done so over long periods of time.

Centralized Disorders in Decentralized Systems: This case, clearly, generates the maximal amount of legalization. Equally clearly, it describes the current American scene, as well as some aspects of the historical situation; we believe it accounts for the high historical levels of legalization in American education (especially through court action) and the very high levels of legalization in the recent period (through court, administrative and legislative action). In this situation, legalizable disorders arise in a number of ways.

First, central legislative bodies legalize. The American Congress, vested with no general educational responsibility or authority, responds to many disorder-discovering interest groups by the creation of special rights or programs in no way integrated into the regular educational system and frequently bypassing many levels of this system. There are special and unintegrated rules about a number of minorities, the poor, the pregnant, special vocational training, female students, a few special curricula of national interest, many types of handicapped or special students, and so on and on. With a general mandate to insure equality, and none to assume responsibility for the educational order, the Congress almost at random emits equalization programs for ever more groups. This process is enhanced by interest groups, which quickly adapt to the

language of equality and the possibilities for national action.

Further, the Congress discovers national disorders in relation to national purposes, not simply in reaction to interest groups: a need for foreign language specialists, or doctors, or more engineers, or mathematics instruction in high schools. Each of these is enacted as a special program, bypassing the institutionalized order. All this is legalization in itself, by our definition. And most national action has this character, since there is little by way of a routinized structure of national educational management.

Second, central administrative agencies, in state and Federal governments, legalize. They create categorical programs with special rules and controls for special problems or groups of students. These rules and controls bypass the main lines of educational organization, reaching down in the system to impact certain specific points. They are unintegrated with the rest of the educational system. Thus, Title I funds and requirements define rules governing certain special resources and groups of students without relating these to the rest of the work of the school and district: they do not redefine the main structure of education and funding to fit in the new elements in an integrated way.

Third, the continued expansion in national action and in nationally certified rights, provides many possibilities for local actors to legalize their claims through court action. Both central legislatures and central courts define these new rights, but make no coherent provision for how these rights are to be fit in with the rest of the educational system.

The recent legislation for the handicapped (PL 94-142) provides an excellent example. It creates legalization on its own--special legal rules bypassing levels of the regular educational system--but far beyond the structure or funding it creates, scatters legal rights throughout the citizenry. Many new types of handicapped pupils (some undiscovered as of a decade or two ago) are endowed with educational rights that probably cannot be met even in principle. A fertile field for private legal action in the courts is created. So also with the broadened rights created by other decisions of the national state. Much of the recent expansion in court actions relating to education has this character (Kirp 1980). Local groups use centrally-conferred rights to racial, income, sex role, or personal characteristic equality to act on local schools and districts through the court system. Almost inevitably the results are to create special rights little integrated with the rest of the educational system, and sometimes at odds with it.

This could all be studied quite easily. Simply pick a random sample of a hundred American students, and have some trained lawyers examine their situations for the total number of plausible court cases against the educational system that they could generate. Perform the same analysis for a sample of students as of ten years ago.

Argument: Our main overall argument is quite clear. The centralization of perceived educational disorders, combined with a decentralized educational order, increases legalization, both from the center and from peripheral groups (which employ centrally-conferred rights).

This argument expalins what may turn out to be a puzzling fact about American educational history. There have been many periods during which the educational agenda (disorder) underwent centralization: why does the present period seem so distinctive in the amount of created legalization? An answer would be that previous waves of disorder involved shifts in control from the local to the state level--and the American states, with legitimate educational authority, could respond by elaborating the routine management system. For many decades, American states responded to issues through the steady and integrated expansion of their institutionalized myths of education--altering the curriculum, expanding requirements for teacher credentialling, raising building standards, raising requirements for attendance, changing rules of pupil classification, and so on. There were occasional special programs and requirements, but most of the rules were built into relatively integrated codes and funded through general educational funds. The myth of education came down to the district and the school in an orderly way, as a package.

But the shift to a national educational agenda cannot take the same form, in the absence of the possibility of legitimated central integration and authority. A national agenda simply adds to a disorganized list of programs, each posing special requirements for the system: legalization from the center, making possible much legal action in the periphery. We now have scores of Federal programs, and many state programs, defining special rules, protections, and resources, little integrated with the main required structure of education. Schools must be schools within the standard myths; but they must also contain the additional elements, some of which are inconsistent with the standard requirements.

They are to treat the poor and minority children equally, but also using the special resources unequally: they are to mainstream the handicapped in the schooling process, but also to treat them with special resources. And over and above the Federal programs, we have an expanded set of citizen rights enforceable through the courts: a competent psychologist could almost certainly find in any of our children one or another special disability which required the school system--in the name of equality--to make special provision. And many of these have at least some chance of court enforcement.

Notes on Additional Variables: Some other aspects of American education and society make legalization especially likely, and suggest that rates of legalization should generally (over long periods of time, not only in the present) be higher in this country.

(1) The American polity endows citizens and associational groups with more rights and capacities for legal action than most. As is well known, this is combined with a generally decentralized state system.

The character of American constitutionalism, with its separate court system descending from the center to each village, passing along a quite extensive set of substantive and procedural rights to each citizen and group of citizens, is a permanent invitation to legalization. The extraordinary American inclination to employ the services of lawyers and the courts is not an irrational litigiousness: it reflects the structure of the American polity.

Further, there has in the recent period been a general extension of rights through the courts. Attacks on many institutions as unjust, using these rights and the mechanisms of the courts, have been common. This general wave of expansion of rights--and the broadening of their application to racial, sexual, and social inequalities--has made for a considerable increase in legalization, entirely aside from any features of the educational system or its problems.

(2) The American cultural theory of education is unusually broad. This is true in several senses. First, educational scope is less restricted by vested academic interests than in most countries and include many more elements and issues (e.g., driver training, etc.) (Van de Graaff, 1978). Second, in an individualist political culture, more emphasis is placed on the importance of institutions of socialization, and these institutions are employed for more legitimate purposes. Third, more differentiated aspects of persons come under the scrutiny of the educational system in this context (i.e., properties of personality, not simply of intellect). All these factors increase the possibilities for legalization.

(3) Intrinsic educational authority (an ingredient in any educational order) is less developed in America than elsewhere, as part of a general political pattern. The autonomous authority of teachers and higher-level educational authorities is less rooted in traditional status definitions and corporate powers, and is more rooted in technical myths. The technical character of educational myths, in a highly ritualized system, provides many grounds for legalization (both from the center and from

peripheries). If the teacher's authority is justified by a highly institutionalized social contract, little room for legal action is created. If this authority is justified by technical considerations, technical objections can be raised--and American educational culture is, at any point, filled with hundreds of candidate technologies compared to whose claims every feature of the present educational system is illegitimate. Squadrons of educational and developmental psychologists will testify in legislative committee hearings, or sometimes in court, to the injustices contained in the present in contrast to the new techniques.

A system that justifies authority by technical considerations leaves highly ritualized orders, which shelter themselves from technical variabilities, open to many social and legal objections. It creates the continuing sense of "status-deprivation" of American educators (Meyer and Roth, 1970). Note that the early studies of occupational prestige (e.g., Counts, 1925) were done at teachers colleges by researchers concerned with the "declining status of teachers" in American society--the concern goes on over a long period of time (Hofstadter, 1964; Lipset, 1960). The problem arises, not because the social rank of teachers is low in America, but because this rank is not accompanied by the broader status rights and authority necessary to the protected functioning of a ritualized order.

III. The Social Generation of Waves of Perceived Educational Disorders

We have traced legalization to the intersection of a decentralized educational order with the creation of centralized conceptions of educational disorders. In this section, we discuss the factors affecting the

latter variable. Two questions, in reality, are at issue. First, what factors create a national awareness of urgent problems in education that require collective resolution? And second, what factors tend to lead these formulations in the direction of legalization? We have already answered the second question in part--arguing that organizational decentralization eliminates the possibility of routinized solutions. But a number of features of American society and education amplify this tendency to adopt legalizational solutions.

First, it must be understood that, whatever the organizational structure of the educational order, modern educational systems are not simply the creatures of emergent local interests and networks of interest: they have substantial general ideological components. Education is advocated, not only for the children of the interested groups, but for all children in the community and society. This is strikingly true of American educational history, even in the absence of much organizational centralization. In the northern and western states, practically universal education was built up by a sweeping set of social movements long in advance of state rules (including even compulsory education rules; American society had a legal notion of truancy long before education was compulsory). It did not arise earlier in the urban centers, where local economic demands might have been highest, but expanded as part of a general cultural pattern (Meyer, et al., 1979; Tyack, 1974). Education was, from the first, a generally collective concern. This is strikingly the case in developing countries now (Boli-Bennett and Meyer, 1978), but also characterized American educational development. The point here is that a collective, and to some

extent national, educational agenda was present from the start, with at least some potential for the legalization of disorder perceptions.

Second, the educational agenda has been centralized further over time. Many factors are involved here: (1) The creation of national customs of occupational certification and a nationwide system of higher education created pressures for educational standardization at lower levels. (2) The general expansion of state control in other societies provided models for the nationalization of educational issues. (3) The general expansion of national state power in the world and in America has tended to produce the redefinition of many issues as national ones. For example, the development of explicit national concerns with the management of the economy in the 20th century, combined with the conception that education is a vital <u>productive</u> investment after World War II, has legitimated much national concern about education: a host of "manpower planning" and occupational training issues both take on educational meaning and become national concerns. (4) The general process of state expansion both aids in the redefinition of more and more rights and citizenship dimensions (e.g., for minorities) as national concerns, and is in some respects a response to the nationalization of such issues. The expansion of citizenship rights and their location in the national state fuels potential educational disorders. (5) Perhaps over and above the expansion in state power, recent decades have generated a wave of concerns—education entirely aside—about citizen rights and equality. Stemming from the historic problems of racial equality, a variety of pressures to expand equality, and the role of the constitutional system in protecting equality, have gone on. Over

and above specific educational problems, these claims have fed into the educational system. This is part of the general logic of modern systems, in which social problems are traced back to the socialization of individuals, and urgent repair requirements in the socialization system are seen as necessary. A variety of problems of general inequality--racial, sexual, income, and the like--are seen as resulting from unequal socialization, and an extension of constitutional rules of equality results.

Third, the historic American process of creating a national educational agenda without a centralized national organizational order has built up and institutionalized sources of continuing formulation of disorders in ways that promote legalization. American society is not unique in the overall amount of perceived educational disorder--the total number of claims made against the educational system by society at any specific time: developing societies for instance have much larger gaps between educational ideals and educational reality. American society is distinctive in that perceived educational disorders tend to lead to legalization rather than routine administrative implementation. And one reason for this is that a whole structure of interest groups tends to arise and become legitimated apart from the standard educational apparatus. These interest groups mobilize their constituencies more than their authority within the bureaucracy, they organize their appeals to the national consciousness, and they formulate their demands in terms of special rights and needs, not smoothly integrated alterations in the (barely extant) central administrative myth of education. Our point here is in some contrast with the picture of interest groups sometimes taken by traditional political scientists--

that their mobilization and forms of mobilization are natural to the social relations and ideas of their constituents. Our argument is sociological: the claims of interest groups often arise out of rights conferred from the center (often, the courts); their mobilization is determined by the possibilities for action opened up in the center; and their organization reflects the structure of possibilities for action, not some natural reflection of their internal constituent interests. Thus (1) In America, many interest groups come to be organized as national legalization-creators. They are not oriented toward becoming coopted by the central administrative apparatus, because there has not been one. So they pursue special claims and rights built around court-conferred and constitution -conferred rights, around new national purposes, around special interests, around equality, and so on: they do not organize claims to modify the integrated national educational control system. (2) National educational authorities rise up outside the organizational order. In other countries, the educational elites come to be built into the national policymaking and administrative system: the connections in America are loose. These elites, in America, rest on various technical or "scientific" justifications: at one time professionals of all sorts, they are increasingly university professors. They are formally unintegrated in the command and control system, and thus formally irresponsible. Their calling is to create and discover disorders. But they make up a kind of national school board with no line authority or line responsibility and so they organize their disorders so as to promote legalization. Recent members of this school board have included, for instance, James Conant, James Coleman, Coons and Sugerman, and Jencks. There are a great many candidate members: the educational

journals and NIE reports are filled with their campaign statements suggesting disorders and often legal solutions. The national educational agenda has, at any one time, room for only a few disorders; the great majority of proposed disorders never really enter this agenda. Some are excluded by the presence of others; others are excluded by political priorities or interest group processes. Prediction here is extremely difficult: no one can predict which new disorders will enter the agenda in the 1990s, and past predictions have by and large been failures. There is a little stability in this system in that one can ascertain rough life cycles for disorders. They rise, build up support, peak, and decay, leaving a greater or smaller institutional precipitate in the established order. Our main point here is that the disorders created tend especially to lead to legalization. It may also be that the lack of formal responsibility of American disorder-creators tends to increase the amount of disorder they perceive, relative to real educational problems, since they are less capable of cooptation than similar elites in other systems.

Fourth, a variety of financial problems in American society, education, and structure of taxation, have led to greatly increased demands for federal educational funding. And state funding, relative to local funding, has increased. The shift upward in fundings, with no corresponding shifts in authority and responsibility, create an invitation for legalization. As part of this process, for instance, the National Institute for Education, with no line responsibility in the system, has throughout its short history been engaged in a search for disorders and legalizational solutions. Most of its funds go into the maintenance of disorders.

In summary, a combination of the forces discussed above may help account for the high level of perceived disorder in American education, and may also help account for the historic special waves of legalization in this system. More centralized agendas arise, create waves of legalization-oriented disorder (some of which can be quickly institutionalized in further centralization): when this system focuses on the federal level, higher levels of legalization are maintained, given the absence of centralized authority in the educational order.

IV. The Intersection of Waves of Disorder and Centralization

Our point here is simple. Waves of disorder may produce little legalization if legitimate centralization, or the modification of central controls, are possible. As the agenda of educational disorders is centralized without much possibility for centralization organizationally, legalization results. Programs and rights are created without organizational integration or management. Both directly and indirectly, legalization results.

This is an important aspect of the present condition of American education (Meyer, 1979). If one examines the structure of an American school district of substantial size, one finds programs and fundings reflecting 30 or 40 different state and federal programs and agencies. These programs are not integrated in any coherent way in the federal government, which has neither general educational authority nor general responsibility. Nor are they integrated at the state governmental level—the states have fragmented structures reflecting federal programs and funds. This is legalization in itself, by our definition: district officials cannot conform to a general federal myth of education, which doesn't exist. They can only be in compliance or not in compliance with specific regulations which were never intended to make general educational sense for the whole system. Much work is created for accountants. And for lawyers. There is no real process that might make federal programs and requirements consistent with each other: one has to elaborate special treatment for various handicapped groups; but at the same time "mainstream" them.

And there is no attempted integration with the policies and purposes of states and districts themselves--the levels at which general education policies and myths are to be formulated. To comply with federal rules, one has to have a resources teacher whose services are restricted to certain groups of students: an ostentatious inequality and violation of district policy is thus created.

Some of this process occurs through legislative action, aided by interest groups focused on legalization, rather than general educational modification. Some of it is amplified by administrative action in the state. But much of it occurs through the courts, which discover and extend private rights, making legal solutions available to a variety of interest groups. Even more than the legislature and central administration, the courts are formally irresponsible for the main conduct of education, and thus exceptionally likely to promote legalizational penetrations of the system--rules poorly linked to the ongoing educational system as a whole.

V. Consequences of Legalization

A result of the great expansion in unintegrated rules and pressures pouring into the educational system from central authorities is an enormous administrative expansion in state and district offices, and a considerable administrative expansion in the school itself. A school or district needs functionaries to deal with each of the special rules and findings and programs that now control it: to write proposals, to collect the specially required data, to write reports, to keep separate accounts. It also needs

expanded legal services to fend off a variety of groups taking advantage of court-extended rights. It is clear that administrative work in American schools and districts has greatly increased in response to this burden: one estimate has it that each new dollar of federal funds creates nine times the increase in administrative personnel that each new dollar of local money creates (Hannan and Freeman 1980). Similar expansions have taken place at the state level: the typical state department of education has large numbers of people whose main role is to respond to and monitor the Federal funds, programs, and court-conferred rights that make up the legalized system. In some states, these functionaries make up a majority of the personnel.

Still, administrative expense is a relatively minor part of the American educational budget. And even though educational administration is made cumbersome and inefficient and even more decoupled (both horizontally and vertically--Meyer, 1979) than in the past, it is not clear that we should regard it as a major educational problem. The American polity has historically tended toward inefficient public administration as a result of the general policy of maintaining a plethora of social controls and citizen rights; a Prussian bureaucracy is not the American dream. So it is in education: a system which maintains an unwieldy list of educational disorders, and which turns many of them into legalizational solutions may nevertheless be more responsive to societal claims than a tidily integrated centralized administrative structure. The disorganized character of the American educational bureaucracy, and its chronic crisis of legitimation, may be an effective and desirable state, giving much room for the expression of diverse public interests.

Consider simply the symbolic value of all this legalization. Consider it especially in a highly institutionalized and ritualized domain like education, which mainly operates by highly symbolic processes (e.g., authority built into unimplemented curricula, policies, and so on). Legalizational solutions are often not effectively implemented organizationally--especially in such a decoupled system as education, and especially when the legalization itself increases organizational inefficiency and decoupling. But they are ways of defining to the educational establishment as a highly institutionalized ritual organization important new rights and public desiderata. Even if the legalized solutions to racial inequality are ineffectively implemented, they mark new public standards, which are now widely shared by administrators, teachers, and parents. Even if the handicapped legislation is legalizational beyond belief, and ineffectively implemented, it communicates to the institutionalized educational community a new emphasis--even unimplemented organizationally, it may affect the judgments of teachers and administrators. Note that one hallmark of American education innovation is that adopted innovations are poorly implemented: but note that another hallmark of the same system is that rates of change in response to national trends are very high--these changes occur more through the institutional features of the system that the organizational ones, so any given change is about as likely to occur where it has not been formally adopted as where it has been adopted. But change does occur: and the structures of legalization--court action, symbolic actions of the central legislature and central administrators--may be a main mechanism, operating through altered symbolic agreements. The

failure of legalizational pressures for desegregation is often noted: less often noted is that a major new national norm is firmly in place, subscribed to by many of the most vocal opponents of organizational implementation.

VI. Prospects for Delegalization

The peculiar structure of the American educational system, and the prospect for a continuing national educational agenda, make it likely that rates of legalization will continue to remain fairly high. Nevertheless, even within this system, some processes of routinization and the absorption of disorders and legal pressures are at work. Anomalous pressures from the center, and expanded rights in the periphery, come to be incorporated in the regular organizational structure, though at considerable cost. Consider some of the ways in which the pressures from the recent waves of educational disorder are being absorbed.

(1) State control systems are expanding, and federal demands are increasingly passed down through the regular state structure. Increasingly federal requirements and funds are handled in this manner, rather than through direct legalized controls over districts and even schools. Given state authority and continuing educational responsibility, this provides some integration and routinization.

(2) Similarly, district administrative structures have expanded, and increasingly come to build in federal requirements. At present, these structures are still highly fragmented, but some possibilities for routin-

ization and integration exist.

(3) At the federal level, in response to much lower-level complaint, there are a number of attempts at simplification and integration. States and districts complain bitterly about the "reporting burden", and the federal officials try to create more integrated and simplified controls and reporting requirements (among other ways, through the creation of FEDAC). The Chief State School Officers organization has gained much power in the federal educational establishment, and is a strong pressure group on behalf of routinization.

(4) Part of the problem is that recent expansions of local rights and federal rules have been organized around the discovery of variabilities in the real world of education. They demand inspection and control of outputs (e.g., test scores), try to control particular processes of instruction and control, and in general try to force the educational order to relate to the real technical educational domain, this is highly destabilizing. But now these efforts are being given up in favor of routinization. Federal and state requirements for program evaluation using output data are weakening and becoming ritualized. Requirements for detailed evaluation of instructional processes are being weakened.

Increasingly, the causal chains managed by the federal myth of education are ending, not in real educational <u>outcomes</u>, but in easily ritualizable <u>structures</u>. They do not require that the treated pupil learn something, or even be treated in a specific educational process: they require that the pupil be located in the proper category, subjected

to teachers with proper certificates, and so on. The causal chains of the new myths, thus, end where educational order has always ended up, in stabilized ritual categories.

This is a fairly stable solution. Of course, because of the absence of much integration among various programs (resulting from the lack of general federal theory of education), much administrative cumbersomness is created. Schools must have a much wider variety of categories of pupils than they used to, a much more elaborate accounting system, a more elaborate reporting system, and many more categories of "specialist" teachers. But it does promote delegalization: a given parent has less legal action available if the school can demonstrate that the incompetence of its treatment of a child nevertheless took place under the proper categorical labels.

The administrative complexity will remain. With older processes of centralization to the state level, given state authority, pressures for change could be responded to by routine redefinition of the standard teacher. If we wanted more emphasis on moral training, we got teachers with seven more semester hours preparation in moral instruction. The fragmented federal system ends up creating many more special categories of teachers and specialists.

This solution--delegalization by folding elaborated ritual categories into the traditional structure--is unattractive in many ways. But it may be the only stable solution. A genuine, integrated federal myth of education is not in the offing.

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